

In the Matter of License No. 217138 and all other Seaman Documents
Issued to Ture W. Brandstrom (Master)

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1304

Ture W. Brandstrom (Master)

In the Matter of
License No. 217138 and all other Seaman Documents
Issued to: Ture W. Brandstrom (Master)

and

License No. 224564 and all other Seaman Documents
Issued to: Joseph E. Hudgins (Pilot)

This joint appeal was in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By orders dated 15 and 27 March 1961, an Examiner of the United States Coast Guard at Norfolk, Virginia suspended Appellant's seaman documents upon finding them guilty of negligence. The specification in the case of Appellant Brandstrom alleges that while serving on board the United States SS HESS DIESEL under authority of his license above described, he did, on 9 February 1961:

"*** negligently fail to relieve the Pilot *** while said vessel was standing in to danger ***."

The two specifications in the case of Appellant Hudgins allege that while serving on board the same vessel at that time as Pilot, under authority of his license above described, he did:

" *** negligently attempt to establish a starboard to starboard passing agreement, while a meeting situation in the bend of a narrow channel ***."

and

"*** negligently fail to keep to the starboard side of the fairway or mid-channel, when navigating a narrow channel ***."

At the hearing, Appellants, represented by counsel, entered pleas of not guilty to the charges and specifications.

The Investigating Officer called as witnesses the pilot of the GOSNEY as well as the pilots of a Norwegian vessel and a tugboat which were in the vicinity of the collision at the time.

Appellants did not testify or otherwise introduce any evidence except the course recorder graph and logbook entries of the GOSNEY.

At the end of the hearing, the Examiner rendered the decisions in which he concluded that the charge and specifications against the Master as well as the charge and two specifications against the Pilot had been proved. The Examiner then entered an order, on 15 March 1961, suspending all documents issued to the Master for a period of one month outright and two months on six months' probation. On 27 March 1961, an order was entered suspending the Pilot's documents for a period of two months outright and four months on eight months' probation.

FINDINGS OF FACTS

Before daylight on 9 February 1961, the inbound SS HESS DIESEL was underway in clear weather, heading south on the Craney Island Reach of the Elizabeth River, near Norfolk Harbor Virginia. The Appellants, Hudgins and Brandstrom, were serving as Pilot and Master, respectively, under authority of their licenses. The Master was on the bridge but he did not at any time relieve the Pilot of the conn. The GOSNEY was underway on the Port Norfolk Reach of the river southeast of the HESS and following the channel on course 310 degrees true. Both vessels had their running lights on. They are oil tanker over 500 feet long.

The Craney Island and Port Norfolk Reaches (both formerly Elizabeth River Channel) are joined at Lambert Bend, a channel which is some 600 yards in length to the west of Lambert Point, a section of land jutting into the river from the eastern shore with docks extending toward the channel. South of Lambert Point the river swings southeasterly from its generally north-south direction above that point. Craney Island Reach is to the north of the bend and Port Norfolk Reach is to the south.

Buoy 29, at the southeast corner of Lambert Bend marks the meeting place of the eastern edges of Port Norfolk Reach and Lambert Bend on the south. Buoy 27, about 600 yards bearing 331 degrees true, from Buoy 29 marks the meeting place of the eastern edges of Craney Island Reach and Lambert Bend on the north. These reaches are about 250 yards wide and Lambert Bend channel is 1000 feet wide. Prior to the events leading up to the collision at about 0555, each vessel had been navigating on its own right side of the channel.

The pilot of the GOSNEY first observed the HESS at a distance of about 1200 yards before either vessel entered Lambert Bend. The HESS's white lights were open, bearing about two points on the GOSNEY's starboard bow. The pilot of the GOSNEY realized that this was a passing situation because the heading of each vessel would change as they progressed along the course of the channel.

After sighting the HESS, the GOSNEY continued at her five knots speed and then began coming right in order to round Buoy 29 to enter Lambert Bend. Meanwhile the HESS, moving at about eight or nine knots, was near mid-channel and a short distance above Buoy 27 when she sounded a two-blast signal and commenced turning to her left across the projected course of the GOSNEY along her right side of the channel. The GOSNEY was then rounding Buoy 29. The GOSNEY sounded a one-blast signal which coincided with either the first or second blast of the HESS's two-blast signal. The effect was that no signal from the GOSNEY was heard on the HESS and only one of the HESS's two blasts was heard on the GOSNEY. This exchange occurred

when the ships were about 800 yards apart approximately two minutes before the collision.

About 1/2 minute later, the HESS sounded another two-blast signal when the ships were both on the easterly side of Lambert Bend. Thereupon, the GOSNEY sounded a danger signal, began backing full, and continued her swing to the right under a hard right rudder. The HESS sounded a three-blast backing signal.

The vessels collided near the easterly edge of the channel approximately halfway between Buoys 27 and 29. The GOSNEY was nearly stopped when her stem came into contact with the starboard side of the HESS as she continued on and passed Buoy 29 to starboard. The GOSNEY anchored below Buoy 27. There was no serious damage to either ship.

Neither Appellant has any prior record.

BASES OF APPEAL

It is contended that the collision was caused by the facts that the GOSNEY did not keep to her right side of the channel approaching Buoy 29 (this is shown by the course recorder, graph of the GOSNEY) and she did not display her navigation lights until near Buoy 29. When the GOSNEY was first seen at this point, she was 10 degrees on the starboard bow of the HESS at a distance of 1/4 mile and the only possibility of avoiding a collision was a starboard to starboard passing. Until this time, the HESS remained on her right side of the channel.

In conclusion, it is submitted that the Examiner's findings of fact are not supported by the record, and, therefore, his conclusions are wrong. Consequently, the charges should be dismissed.

APPEARANCE: Seawell, McCoy, Winston and Dalton of Norfolk,
 Virginia by Robert M. Hughes III, Esquire, of
 Counsel.

OPINION

My above findings of fact are substantially in agreement with those of the Examiner except with respect to the approximate location of the collision relative to Buoys 27 and 29. The testimony indicates that the GOSNEY, travelling at a slower speed than the HESS, swung onto Lambert Bend shortly before the Hess. This indicates that the collision occurred about halfway between the two buoys. The testimony of the neutral tugboat pilot agrees with this (R. 50). Appellant does not disagree with the finding

that the two ships came together near the easterly edge of the channel.

Appellant's contention that the GOSNEY was on the wrong side of the channel is based on a projection of her course, from a distance of about 3/4 mile below Buoy 29, based on the course recorder graph. I disagree with the result obtained in this way because not only the pilot of the GOSNEY testified that she remained on her right-hand side approaching Buoy 29, but the pilots of both the Norwegian vessel and the tugboat corroborated this (R. 26, 49).

The Norwegian vessel's pilot also testified that the GOSNEY was displaying the proper running lights when he first saw her on the east side of the channel (R. 26). There is no evidence to indicate that her lights were not on before this time as they normally would have been while under way. The Appellants have raised this issue on appeal but they did not do so at the hearing where neither of them testified. Consequently, it seems that the Appellants were in as good position to see the lights of the GOSNEY at a distance of about 1200 yards as the pilot of the GOSNEY was when he observed the HESS at this distance.

The pilot of the tugboat was much closer to the GOSNEY and HESS as they came onto Lambert Bend than was the pilot of the Norwegian ship. The latter's testimony was indefinite as to the positions of the two ships as they drew closer to each other. But the testimony of the tugboat pilot is clear, support of that of the GOSNEY's pilot, that the GOSNEY remained on the east side of the channel and that the HESS was also on the east side before she entered Lambert Bend (R. 44, 49).

Under the circumstances, Appellant Hudgins was negligent for attempting to establish a starboard passing agreement in violation of 33 U.S. Code 203 and then proceeding to the wrong side of the channel without obtaining an acceptance of his proposal to depart from the rule. In a winding channel, the intended courses of the meeting vessels is the important factor rather than their temporary headings as they change courses to follow the bends of the channel. Construction Aggregates Co. v. Long Island R. Co. (C.C.A., 1939), 105 F. 2d 1009; Bull SS Co. v. United States (C.C.A. 1929), 34 F. 2d 614. It was the Pilot's responsibility to comply with the rules as long as he was in charge of the ship's navigation. The confusion of the initial signals by each vessel did not in any way relieve Appellant Hudgins of this responsibility.

In turn, the Master of the HESS was negligent because he did not supersede the Pilot when the HESS commenced turning toward her left-hand side of the channel after improperly sounding the

two-blast signal which was not returned by the GOSNEY. The Examiner has stated extensive authorities to the effect that a master is always in command of his ship and has the duty to displace the pilot where the ship "was pressing on into danger" and "the pilot was doing nothing about it." Union Shipping and Trading Co., Ltd., v. United States (C.C.A. 2, 1942), 127 F. 2d 771. There is no doubt that the HESS was standing into danger as alleged. The Master was bound to know what was happening and, with only about 2 minutes in which to avert the collision, to act immediately to protect his ship.

ORDERS

The orders of the Examiner dated at Norfolk, Virginia, on 15 and 27 March 1961, are AFFIRMED.

E.J. Roland
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 1st day of May 1962.